

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

RIGINAL

77-1063

BS

**United States Court of Appeals
For the Second Circuit**

THE UNITED STATES OF AMERICA,

Appellee.

-against-

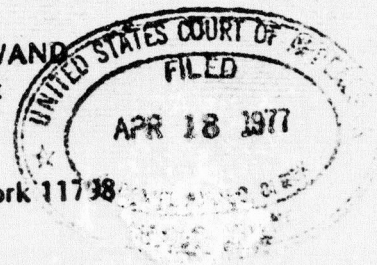
WILLIAM CORTES-RIOS,

Appellant.

On Appeal From The United States
District Court For The Southern
District Of New York

APPELLANT'S REPLY BRIEF

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1063

UNITED STATES OF AMERICA,

Appellee,

--v.--

WILLIAM CORTES-RIOS,

Appellant.

APPELLANT'S REPLY BRIEF

The prosecution in its opposing brief seeks to support the sentence imposed upon appellant upon the ground that he was the "financial overseer", (page 4) for an organization which "had been the New York outlet for enormous quantities of brown rock Mexican heroin". (page 3)

It is respectfully submitted that such statement is mere speculation and is not established fact or otherwise supported by anything in the record of this or any other proceeding. Under such circumstances it should have no affect upon the sentence procedure herein.

The government's argument in resisting the appeal does not obscure the fact that the voluntary seven-page written confession and statement by Mr. Cortes-Rios, (APP. 31-37) gave a multitude of information to the government as well as a candid list of appellant's involvement therein.

It is worth noting that on page 7 (in the bottom footnote) of its brief, the prosecution candidly states that the probation department in preparing its pre-sentence report "relied on summaries of evidence furnished to it by the Government." (emphasis added)

Such procedure obviously is one-sided and does not present a full view of the facts as they may exist.

In its ARGUMENT the government claims there is no authority for appellate review of a sentence and that "no Court has ever relied upon 28 U.S.C. sec. 2106 as a basis for such review". However, it is respectfully submitted that such eventuality has been discussed by the textbook writers. See volume 8A, Moore's Federal Practice, second edition (Rules of Criminal Procedure) paragraph 32.09.

WHEREFORE, it is again respectfully requested that this Court reduce the sentence imposed upon appellant or in the alternative remand the case with corrective suggestion to the District Court for a reduction upon re-sentence.

Respectfully submitted,

SHAPIRO, SOMER & WAND
Attorneys for Appellant

Stanley L. Shapiro
On the Brief

SHAPIRO

STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 18 day of April 1977 deponent served the within Reply Brief upon

U.S. Atty. So. Dist. of NY

attorney(s) for

Appellee

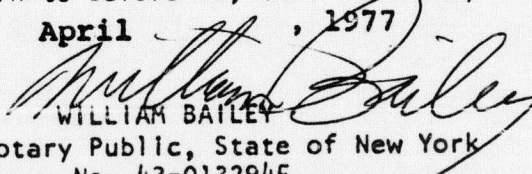
in this action, at

1 St. Andrews Pl., NYC

the address(es) designated by said attorney(s) for that purpose by depositing 3 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 18 day
of April, 1977


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978